

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TYLER SMITH, <sup>1</sup>	§	
	§	No. 714, 2009
Respondent Below,	§	
Appellant,	§	Court Below—Family Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
DIVISION OF FAMILY SERVICES,	§	
	§	File No. 08-05-02TN
Petitioner Below,	§	Pet. No. 08-38524
Appellee.	§	

Submitted: May 21, 2010

Decided: July 9, 2010

Before **STEELE**, Chief Justice, **JACOBS** and **RIDGELY**, Justices.

**ORDER**

This 9<sup>th</sup> day of July 2010, upon consideration of the appellant's opening brief filed pursuant to Supreme Court Rule 26.1, his attorney's motion to withdraw, and the appellee's response, it appears to the Court that:

(1) The appellant, Tyler Smith, has appealed the Family Court's November 16, 2009 termination of his parental rights (TPR) in his son, Thomas, born May 19, 2006.<sup>2</sup> On appeal, Smith's counsel has filed an opening brief and a motion to withdraw pursuant to Supreme Court Rule

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<sup>1</sup> By Order dated December 15, 2009, the Court assigned a pseudonym to the appellant. Del. Supr. Ct. R. 7(d).

<sup>2</sup> "Thomas" is a pseudonym hereby assigned to Smith's son.

26.1<sup>3</sup> Smith's counsel submits that she is unable to present a meritorious argument in support of the appeal, and that Smith has submitted no points for this Court's consideration. In response to the opening brief, the appellee, Division of Family Services (DFS), has moved to affirm the Family Court's judgment.<sup>4</sup>

(2) The background of this matter is as follows. In November 2007, one-year old Thomas was living at home with his mother, step-father, half-brothers and half-sister. On November 10, 2007, DFS received a referral that Thomas' half-sister, a three month old infant, had been critically injured at home under suspicious circumstances.<sup>5</sup> In response to the referral, and with the consent of Thomas' mother and step-father, DFS removed Thomas and his half-brothers ("the children") from the home and placed them with a maternal cousin.

(3) Animosity between Thomas' mother and her cousin soon interfered with the children's placement. Consequently, DFS filed a dependency/neglect petition seeking emergency legal custody of the children. By *ex parte* order dated December 21, 2007, the Family Court

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<sup>3</sup> See Del. Supr. Ct. R. 26.1 (providing for continuing obligation of appellant's trial counsel in appeal from termination of parental rights).

<sup>4</sup> By letter dated May 21, 2010, the attorney guardian *ad litem* appointed by the Family Court to the minor child adopted the position of DFS.

<sup>5</sup> As a result of the infant's death, Thomas' mother pled guilty in November 2008 to a misdemeanor charge of endangering the welfare of a child.

granted the petition. On February 8, 2008, DFS placed the children in foster care. At that point in time, the identity of Thomas' biological father was unknown.

(4) By April 2008, Smith had been identified as Thomas' possible biological father and was added as a party to the dependency/neglect proceedings. Between April and July 2008, however, Smith was incarcerated and was unable to participate in the proceedings or in case planning.

(5) In July 2008, Smith made his first court appearance in the proceedings and was appointed counsel. In August 2008, following genetic testing, Smith was formally adjudicated as Thomas' father. In October 2008, Smith and DFS entered into a reunification case plan.

(6) Smith's case plan required that he (i) comply with the conditions of probation; (ii) complete a substance abuse evaluation; (iii) follow any substance abuse treatment recommendations; (iv) complete parenting classes; (v) obtain employment or income sufficient to provide for himself and Thomas; and (vi) visit with Thomas. The record reflects that Smith was partially successful in completing the case plan.

(7) On December 1, 2008, DFS filed a petition seeking to terminate Smith's parental rights in Thomas.<sup>6</sup> The TPR petition was based on Smith's inability or failure to plan adequately for Thomas' physical needs or mental and emotional health and development.<sup>7</sup>

(8) Smith's TPR hearing began on June 2, 2009 and concluded on October 6, 2009. The Family Court heard testimony from Smith's substance abuse counselor, Thomas' foster mother, three DFS investigative and/or treatment workers, a parenting program supervisor, and Smith himself.

(9) At the conclusion of the TPR hearing, the Family Court announced its decision to grant DFS' petition to terminate Smith's parental rights in Thomas.<sup>8</sup> The Family Court followed its October 6, 2009 oral announcement with a written decision on November 16, 2009. Smith's appeal followed.<sup>9</sup>

(10) In Delaware, the statutory standard for terminating parental rights provides for a two-step analysis.<sup>10</sup> First, there must be proof of a statutory basis for termination under title 13, section 1103 of the Delaware

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<sup>6</sup> The petition also sought to terminate the parental rights of Thomas' mother.

<sup>7</sup> Del. Code Ann. tit. 13, § 1103(a)(5) (2009).

<sup>8</sup> The Family Court also terminated the parental rights of Thomas' mother.

<sup>9</sup> Thomas' mother filed a separate appeal.

<sup>10</sup> *Shepherd v. Clemens*, 752 A.2d 533, 536-37 (Del. 2000).

Code.<sup>11</sup> “Second, there must be a determination that severing the parental right is in the best interests of the child.”<sup>12</sup> Both steps must be established by clear and convincing evidence.<sup>13</sup>

(11) In this case, the Family Court concluded that DFS had proven by clear and convincing evidence that Smith’s parental rights should be terminated on the basis of his inability or failure to adequately plan for Thomas’ physical needs and emotional health and development.<sup>14</sup> In support of that conclusion, the Family Court found that Thomas had been in DFS custody since December 2007 and in foster care since February 2008.<sup>15</sup> The Family Court found that Smith had never lived with Thomas nor taken responsibility for his care,<sup>16</sup> had no permanent residence in which he and Thomas could live,<sup>17</sup> was not able to support Thomas financially,<sup>18</sup> had not successfully completed substance abuse treatment, and had recently tested positive for PCP.<sup>19</sup> Also, the Family Court found that DFS had offered

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<sup>11</sup> *Id.* at 537. See Del. Code Ann. tit. 13, § 1103(a) (listing grounds for termination of parental rights).

<sup>12</sup> *Shepherd v. Clemens*, 752 A.2d at 537. See Del. Code Ann. tit. 13, § 722(a) (listing best interest factors).

<sup>13</sup> *Powell v. Dep’t of Serv. for Children, Youth & Their Families*, 963 A.2d 724, 731 (Del. 2008) (citing *In re Stevens*, 652 A.2d 18, 23 (Del. 1995)).

<sup>14</sup> Del. Code Ann. tit. 13, § 1103(a)(5).

<sup>15</sup> § 1103(a)(5)a.1.

<sup>16</sup> § 1103(a)(5)a.2.

<sup>17</sup> § 1103(a)(5)a.4.

<sup>18</sup> *Id.*

<sup>19</sup> § 1103(a)(5)a.5.

Smith a reasonable case plan to effectuate reunification but that he had not successfully completed that plan and had demonstrated no urgency to do so.<sup>20</sup>

(12) Having concluded that at least one statutory ground existed to terminate Smith's parental rights, the Family Court next considered whether termination of Smith's parental rights was in the best interest of Thomas.<sup>21</sup> After carefully considering each of the best interest factors and making specific factual findings as to each, the Family Court concluded that the termination of Smith's parental rights was in Thomas' best interests.<sup>22</sup> In part, the Family Court found that Thomas had developed a very close relationship with his foster parents, who wished to adopt him, as well as with his foster parents' four adopted children and with his half-brother with whom he also lived. In contrast, the Family Court found that Thomas had only a nascent relationship with Smith.

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<sup>20</sup> See *Powell v. Dep't of Serv. for Children, Youth and their Families*, 963 A.2d 724, 737 (Del. 2008) (citing *In re Hanks*, 553 A.2d 1171, 1179 (Del. 1989)). See generally *In re Burns*, 519 A.2d 638, 646-49 (Del. 1986) (outlining state and federal statutory schemes requiring state agencies to expend all reasonable efforts to preserve the family unit).

<sup>21</sup> Del. Code Ann. tit. 13, § 722(a).

<sup>22</sup> *Id.*

(14) This Court’s review of the termination of an individual’s parental rights involves consideration of the facts and law.<sup>23</sup> To the extent the issues implicate rulings of law, our review is *de novo*.<sup>24</sup> The Court will not disturb inferences and deductions that are supported by the record and that are the product of an orderly and logical deliberative process.<sup>25</sup> To the extent the issues implicate rulings of fact, our review is limited to abuse of discretion.<sup>26</sup> We conduct a limited review of the factual findings to assure that they are sufficiently supported by the record and are not clearly wrong.<sup>27</sup>

(15) In this appeal, having carefully reviewed the parties’ positions and the record, the Court concludes that there is clear and convincing evidence supporting the Family Court’s termination of Smith’s parental rights on the statutory basis of his failure to plan for Thomas’ physical needs and emotional health and development. The record also supports the Family Court’s findings that DFS made *bona fide* reasonable efforts to reunite Smith with Thomas, and that ultimately the termination of Smith’s parental rights

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<sup>23</sup> *Wilson v. Div. of Family Serv.*, 988 A.2d 435, 440 (Del. 2010) (citing *Powell v. Dep’t of Serv. for Children, Youth & Their Families*, 963 A.2d 724, 730 (Del. 2008); *Solis v. Tea*, 468 A.2d 1276, 1279 (Del. 1983)).

<sup>24</sup> *Id.* (citing *Powell v. Dep’t of Serv. for Children, Youth & Their Families*, 963 A.2d at 730-31; *see also In re Heller*, 669 A.2d 25, 29 (Del. 1995); *Black v. Gray*, 540 A.2d 431, 433 (Del. 1988)).

<sup>25</sup> *Id.* (citing *Powell v. Dep’t of Serv. for Children, Youth & their Families*, 963 A.2d at 731.)

<sup>26</sup> *Id.*

<sup>27</sup> *Id.* (citing *Powell v. Dep’t of Serv. for Children, Youth & Their Families*, 963 A.2d at 731; *In re Stevens*, 652 A.2d 18, 23 (Del. 1995)).

was in the best interests of Thomas. We find no abuse of discretion in the Family Court's factual findings and no error in the court's application of the law to the facts. Accordingly, the Family Court's judgment shall be affirmed.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Family Court is AFFIRMED. The motion to withdraw is moot.

BY THE COURT:

/s/Henry duPont Ridgely  
Justice